



## STATE OF WISCONSIN Division of Hearings and Appeals

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In the Matter of

Marathon County Dept. of Social Services, Petitioner

vs.

██████████, Respondent

DECISION

Case #: FOF - 206842

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Pursuant to a petition filed November 14, 2022, under 7 C.F.R. §273.16, to review a decision by the Marathon County Dept. of Social Services to disqualify ██████████ from receiving FoodShare benefits (FS) for a period of one year, a hearing was held on January 4, 2023, by telephone.

The issue for determination is whether the respondent committed an Intentional Program Violation (IPV).

**PARTIES IN INTEREST:**

Petitioner:

Marathon County Dept. of Social Services  
400 E. Thomas Street  
Wausau, WI 54403  
By: Mary Brock

Respondent:

██████████  
██████████  
██████████

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

### **FINDINGS OF FACT**

1. The respondent (CARES # ██████████) is a resident of Marathon County who received FS benefits in 2022.
2. On March 2, 2022, the respondent contacted the agency by telephone to complete a renewal. When asked if she was currently working, she responded "no." When asked if she had rental or other shelter expenses, she said no and could not get a place "until I find a job." When asked if she had a change in employment in the last 30 days, she responded no. The worker noted fourth quarter, 2021 income at ██████████, and

the respondent said the job ended about a week after it started. Later, when the worker reviewed the answers, the respondent again reiterated that she was not employed. [This finding is based on the recordings of the interview included in the hearing record.] FS then were issued based on zero income.

3. The respondent actually was working at [REDACTED] consistently from December, 2021 through May, 2022, with no breaks. See Exhibit 4. In February, 2022 she earned \$915.46, in March she earned \$1,947.94, in April she earned \$1,854.45, and in May she earned \$2,027.09. She did not contact the agency to report the income after the March 2 interview.
4. On November 14, 2022, the petitioner prepared an Administrative Disqualification Hearing Notice alleging that the respondent falsely reported having no income. The respondent has no prior IPV findings.

## DISCUSSION

An intentional program violation of the FoodShare program occurs when a recipient intentionally does the following:

1. makes a false or misleading statement, or misrepresents, conceals or withholds facts;  
or
2. commits any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any Wisconsin statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of FoodShare benefits or QUEST cards.

*FoodShare Wisconsin Handbook*, §3.14.1; see also 7 C.F.R. §273.16(c) and Wis. Stat., §§946.92(2).

An intentional program violation can be proven by a court order, a diversion agreement entered into with the local district attorney, a waiver of a right to a hearing, or an administrative disqualification hearing. *FoodShare Wisconsin Handbook*, §3.14.1. The petitioner can disqualify only the individual found to have committed the intentional violation; it cannot disqualify the entire household. Those disqualified are ineligible to participate in the FoodShare program for one year for the first violation, two years for the second violation, and permanently for the third violation. Although other family members cannot be disqualified, their monthly allotments will be reduced unless they agree to make restitution within 30 days of the date that the FS program mails a written demand letter. 7 C.F.R. §273.16(b).

To establish that an FS recipient has committed an IPV, it has the burden to prove two separate elements by clear and convincing evidence. The recipient must have: 1) committed; and 2) intended to commit a program violation per 7 C.F.R. §273.16(e)(6). In *Kuehn v. Kuehn*, 11 Wis.2d 15 (1959), the court held that:

Defined in terms of quantity of proof, reasonable certitude or reasonable certainty in ordinary civil cases may be attained by or be based on a mere or fair preponderance of the evidence. Such certainty need not necessarily exclude the probability that the contrary conclusion may be true. In fraud cases it has been stated the preponderance of the evidence should be clear and satisfactory to indicate or sustain a greater degree of certitude. Such degree of certitude has also been defined as being produced by clear, satisfactory, and convincing evidence. Such evidence, however, need not eliminate a reasonable doubt that the alternative or opposite conclusion may be true....

*Kuehn*, 11 Wis.2d at 26.

*Wisconsin Jury Instruction – Civil 205* is also instructive. It provides:

Clear, satisfactory and convincing evidence is evidence which when weighed against that opposed to it clearly has more convincing power. It is evidence which satisfies and convinces you

that “yes” should be the answer because of its greater weight and clear convincing power. “Reasonable certainty” means that you are persuaded based upon a rational consideration of the evidence. Absolute certainty is not required, but a guess is not enough to meet the burden of proof. This burden of proof is known as the “middle burden.” The evidence required to meet this burden of proof must be more convincing than merely the greater weight of the credible evidence but may be less than beyond a reasonable doubt.

Further, the *McCormick* treatise states that “it has been persuasively suggested that [the clear and convincing evidence standard of proof] could be more simply and intelligibly translated to the jury if they were instructed that they must be persuaded that the truth of the contention is highly probable.” 2 *McCormick on Evidence* §340 (John W. Strong gen. ed., 4<sup>th</sup> ed. 1992).

To find that an IPV was committed, the trier of fact must derive from the evidence a firm conviction as to the existence of each of the two elements even though there may be a reasonable doubt as to their existence.

To prove the second element, i.e., intention, there must be clear and convincing evidence that the FS recipient intended to commit the IPV. The question of intent is generally one to be determined by the trier of fact. *State v. Lossman*, 118 Wis.2d 526 (1984). There is a general rule that a person is presumed to know and intend the probable and natural consequences of his or her own voluntary words or acts. See *John F. Jelke Co. v. Beck*, 208 Wis. 650 (1932); 31A C.J.S. Evidence §131. Intention is a subjective state of mind to be determined upon all the facts. *Lecus v. American Mut. Ins. Co. of Boston*, 81 Wis.2d 183 (1977). Thus there must be clear and convincing evidence that the FS recipient knew that the act or omission was a violation of the FS Program but committed the violation anyway.

Based upon the record before me, I find that the petitioner has established by clear and convincing evidence that the respondent intentionally violated FS program rules, and that this violation was the first such violation committed by the respondent. A recipient is required to provide correct and truthful information in all applications and renewals. See 7 C.F.R. §273.2(b)(1)(i). Wis. Stat., §946.92(2)(a) provides that it is a violation of the FS program to make false or misleading statements to program officials. Since FS eligibility and allotments are based upon household income and expenses, it is vital to the program that income be reported accurately. See 7 C.F.R. §273.9. The respondent testified that the job was inconsistent, that she was going through a tough time, and that she was confused about her job status. However, she clearly and unequivocally lied when asked about the [REDACTED] job when she said it ended after only a week. At that moment the respondent had been working consistently for three months. That the respondent went out of her way to lie about the job shows her intent. The petitioner correctly seeks to disqualify the respondent from the FS program for one year.

### **CONCLUSIONS OF LAW**

1. The respondent violated, and intended to violate, the FS program rule specifying that income and expenses must be reported accurately as required by 7 C.F.R. §273.9.
2. The violation specified in Conclusion of Law No. 1 is the first such violation committed by the respondent.

**NOW, THEREFORE, it is ORDERED**

That the petitioner’s determination is sustained, and that the petitioner may make a finding that the respondent committed a first IPV of the FoodShare program and disqualify the respondent from the program for one year, effective the first month following the date of receipt of this decision.

## APPEAL TO COURT

You may appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, WI 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing request (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

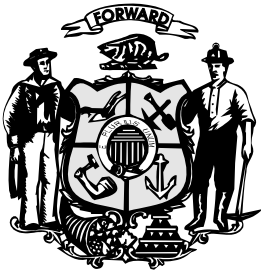
Given under my hand at the City of Madison,  
Wisconsin, this 9th day of January, 2023



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\sBrian C. Schneider  
Administrative Law Judge  
Division of Hearings and Appeals

c: Central Consortium - email  
Public Assistance Collection Unit - email  
Division of Health Care Access and Accountability - email  
Mary Brock - email



## **State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on January 9, 2023.

Marathon County Department of Social Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability  
[REDACTED]